1951

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**File No.** Cr. A. Belgaum 51

Legal DEPARTMENT

A BRANCH

Subject:—

Criminal Appeals in the High Court of Bombay against the orders of acquittals from Belgaum District.

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Cr. A. Belgaum/51

**File No.**

Std. Scott...Slip 24-B

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Copy applied for on the 3rd (Third) March 1951.
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Sd/-

Record-Keeper.

Sessions Case No.64/1950.

Exhibit S.No.(48.

In the Court of the Additional Sessions Judge,

At Belgaum.

The State.

Vs.

1. Dodyamanappa Sarjeppa Dote of Hosur, Accused.
2. Channappa Shiddappa Dote of do,
3. Fakirappa Yellappa Bhoi of Murakumbi,
4. Ulavappa Shiddappa Dote of Hosur,
5. Irappa Mallappa Angadi of do,
6. Sanyamanappa Sarjeppa Dote of do,
7. Irappa Shiddappa Dote of do..

J U D G M E N T .

These seven accused were tried for having committed in furtherance of the common intention of them all, the murder of Shivappa Shiddappa Maddennavar on the 26th of January 1949 at Murkumbi, by causing him injuries with deadly weapons an offence punishable under S. 302 read with S.34 I.P.C.

2. The case for the prosecution is, accused Nos.1 and 6 are brothers and so are accused Nos.4 and 7. The other accused are their friends. Some three years prior to the commission of the offence there was an attempt made on the life of accused No.6 and his relation one Mugappa by deceased Shivappa, his brother Mayappa and others. Mugappa died. Accused No.6 survived. In the trial that followed, Mayappa alone was convicted. It is said this incident led to ill-feeling between the family of the deceased and accused Nos. 1 and 6.

3. On 26th January 1950, at about sun-set time when deceased Shivappa was in his shop at Murukumbi, all these

accused came and attacked him. Accused No.1 had a pistol. Accused No.6 had an axe. They dragged him from the shop on the road. The other accused were on the road. They cut him with the axes and scythes. Shidlingayya, Channappa, Nabisab and Ningappa who were in the shop of the deceased, witnessed the assault. Kenchavva, the wife of deceased on hearing the noise rushed to the scene. As she fell on the body of -- Shivappa, who was being assaulted, she was dragged and beaten and sent away. As complainant Yellappa tried to approach the spot, he was fired at by accused No.1. He turned round and left, but abain returned. Kenchavva and he, attended to the injuries of Shivappa who disclosed to them the names of the assailants. Yellappa then went to the Police Patil. Not - finding him at home he went to his Khala and gave him the information. The Police Patil and Yellappa came to the house of the Patil where the written complaint (exhibit 18) was given. They then proceeded to the scene where the dying declaration of Shivappa(exhibit 20) was recorded by Patil in the presence of the Panchas. The Patil then wrote out his report (ex.21) and then sent the complaint (exhibit 18), dying declaration - (exhibit 20), his report (exhibit 21) with the Yadi (ex.22) to the P.S.I. (exhibit 28). He received the papers at 2 A.M. on the 27th of January 1950. He registered the offence and proceeded with the investigation.

4. The P.S.I. proceeded to the scene, made panchanama of the scene of offence and attached articles No.1 to 3. He recorded the statements of Yellappa, Kenchava and made a panchanama of the injuries found on her person. The injured was sent to the Medical Officer, Bail-hongal. On the same day the statements of Ningappa, Shidlingayya, and Channappa the eye-witnesses were recorded. The houses of several - accused were searched, but no incriminating articles were found except in the house of accused Nos. 4 and 7. Art.8 - a shirt - with blood-stains was found therein. The investigation proceeded. On 29-1-1950 accused Nos. 1 to 3 and - another Martand were arrested. On 30-1-1950 the statement

of Police Patil was recorded. The arrested accused were sent to the Resident Magistrate, F.C. Bail-hongal for remand Accused Nos.4 and 5 were arrested on 4th of March 1950. Accused No.6 was arrested on the 8th of March 1950. On 4-4-1950 a charge-sheet was sent against accused Nos. 1 to 6 to the court of the R.M.F.C. Saundatti. Accused No.7 was subsequently arrested and a supplementary charge-sheet was sent against him on 30-7-1950.

5. The learned Magistrate found a prima facie case made against these accused and committed them to this Court for trial.

6. In this Court accused were charged as at exhibit 1 with having committed in furtherance of the common intention of them all, the murder of Shivappa, an offence punishable under S. 302 read with S.34 I.P.C.

7. The accused pleaded not guilty and claimed to be -- tried. They contended that Mayappa, Shivappa, the eye-witnesses and the Police Patil formed a party who had falsely involved them in the case. The evidence was untrue, the dying declaration was a fabricated document. Accused Nos. 4 and 7 said that the shirt attached was not theirs.

8. The trial was with aid of assessors. Two of the assessors were of opinion that accused Nos.1 and 6 alone were guilty of offence punishable under S. 304 Part I, while the remaining two assessors were of the opinion that all the Accd. were guilty of offence punishable under S. 304 Part I read with S.34 I.P.C. opinion was equally divided as to whether the dying declaration was genuine.

9. The points that arise for consideration in the case are:-

1. Whether Shivappa died of violence?
2. Whether all accused, or any of them, committed the acts of violence?
3. What was the knowledge or intention of the Accd?
4. What offence, if any, is shown to have been committed by any of the accused?

My findings are :- (1) Yes. (2) No. (3) Does not survive (4) None proved.

R E A S O N S

9. There is no doubt that Shivappa died of violence. Whether the different witnesses saw the assault being committing on him and identified the assailants or not, there can be little doubt, that his wife (exhibit 14) and Yellappa (exhibit 17) - approached the scene and found him lying injured infront of his shop. The Police Patil (exhibit 19) after the receipt of the complaint came and saw him on the spot. A Panchanama of the scene of offence made on the morning of 27th shows that the ground infront of the shop was in places covered with blood. Witness exhibit 24 removed the injured, who died on the way. An inquest panchanama (exhibit 16) discloses the injuries found on his person. The body was examined by the Medical Officer (exhibit 10), next day afternoon i.e. on 27th. He has made his notes exhibit 11. The Medical Officer found ten ante-mortem incised wounds on his person. In his opinion, they must -- have been caused by sharp cutting instruments, and death was due to shock and bleeding as a result of multiple injuries. The injuries taken together were sufficient, in the ordinary course of nature, to cause death. It is doubtless then, that Shivappa died as a result of injuries inflicted on him that evening by sharp cutting instruments.

10. The next and most important question is, whether the accused or any of them are responsible for the infliction of these injuries and if they are guilty of any offence. It is suggested on behalf of the prosecution, that there was ill-feeling between the family of accused Nos.1 and 6 and - deceased Shivappa. Accused Nos. 4 and 7 are brothers and other accused are friends of accused Nos.1 and 6, and so, they joined in the commission of murder of deceased Shivappa. It is true that three years prior to the offence, murderous assault was committed on accused No.6 and his relation - Mugappa, who died as a result of that assault. Mayappa, his

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brother deceased Shivappa, Shivappa's wife's brother Yellappa and one more were put on trial. All except Mayappa, however, were acquitted, It is possible, therefore, that there was ill-feeling between the family of accused Nos. 1 and 6 and deceased Shivappa. The incident, however, took place three years ago, and it is not known what was the immediate cause that led to the assault of Shivappa. Apart from the evidence of witness Yellappa, which is far from satisfactory, there is hardly anything to show that other accused were so intimately connected with accused Nos.1 and 6 that they would join in the commission of a murder. From this evidence it would be difficult even to infer that possibly accused Nos.2,3,4,5 and 7 were concerned in the commission of offence.

11. To prove the guilt of the accused, the evidence led on behalf of the prosecution consists of persons who claim to have seen the assault and identified the assailants - Shidalingayya (exhibit 7), Channappa (exhibit 8), Nabisab (ex.9) and Ningappa (exhibit 13) are eye-witnesses in the case. Their story is that about sun-set time that day, they were in the shop of deceased Shivappa, which is about 20 cubits from the residential house of Shivappa. As the witnesses were sitting in the shop, accused No.1 with a pistol and Accd. No.6 with an axe came and dragged the deceased Shivappa on the road. There were others and accused Nos.2,3,4,5 and 7 who cut him with axes and sticks. Exhibits 7 and 9 claim to have identified all the seven accused. Exhibit 8 did not identify accused Nos. 3 and 4. Exhibit 13 did not identify accused Nos. 2,4,5 and 7. He had not mentioned having identified accused No.5 when he made his statement before the Police. These witnesses stood two or three cubits away and witnessed the assault. Their story is that Kenchavva, the wife of Shivappa came up; she was also assaulted. Later on when Yellappa tried to approach the scene, he was fired at and so, he left.

12. Now the question is, if the evidence of these

witnesses can be relied upon. It is suggested on behalf of the defence that they formed a Gang with Shivappa and his brother. Shivappa was an accused in the case relating to the murder of Mugappa and an attempt on accused No.6. This incident took place on the thrashing ~~fxxx~~ floor of Basappa the brother or relation of witness Channappa. It is admitted that Shivappa's brother Mayappa did forcibly carry away corn from agriculturists. He had following 8 or 10. Yellappa the complainant - admitted that he was joint with Mayappa, but denied that he was one of the Gangstors. He did not, however give who these 8 or 10 were of the gang. The suggestion on behalf of the defence that the witnesses were of a party of Shivappa helped by the Police Patil, cannot be said to be without substance. Even Kenchavva admitted that these witnesses at times came to her husband's shop to enquire after him, and they came to his house as well.

13. The witnesses were all in the shop and were close to the scent of offence. If they could identify the assailants, one ~~should~~ have expected them to give some details of the assault, but they repeat the blank story of two accused dragging and the rest cutting with sickles and axes. Though they say they waited and watched the assault for half a Ghalgi(about ten minutes), they are not quite consistent as to where they were when they saw the assault. Shidalingayya states that at the sight he got frightened and began to run; but later on added, that he and his companions stayed on as accused No.1 asked them to stay. Channappa says he stood all alone and he did not know if his companions were there. Nabisab states we all four witnesses came out of the shop and stood a few cubits away. Ningappa (exhibit 13) says Shidlingayya and Channa pa were on the one side and he was on the opposit side. It will be observed that though he narrated the story as given by others, in his statement before the police he said when accused Nos. 1 and 6 came ~~xx~~ and there were others on the road; he ran home and standing

infront of his house, his witnessed the assault. His house is 20 Akkadies away from the scene. He then speaks of the assault commencing with the dragging of Shivappa on the road.

14. It is extremely doubtful if Nabisab (exhibit 9) was there at all. He works at Bailhongal as mason and ordinarily does not return until half and hour after sun-set. He however, says he left his work that day an hour earlier. In his statement before the police, he stated he came an hour after the night-fall, and even in the Committing Magistrate's Court he stated he went to the shop an hour after night-fall. In Committing Magistrate's Court he was not prepared to disclose the names of the assailants and had to be coaxed or warned before he disclosed them.

15. It will next be observed that even some of these eye-witnesses were present, it would be difficult to say that they could have identified the assailants. All of them want now to assert that it was about sun-set time when no lamps were yet lit, that the assailants attacked Shivappa. There was no moon-light then. It is obvious, they are now trying to bring the incident a little earlier in order to make the identification possible, and their statements regarding identification of the assailants believable. Their version before the police was the incident took place an hour after dark.

16. Their behaviour is far from natural. They raised no cries or shouts. They did not run for help, but awaited and watched the assault. They say no people gathered, but in their statements before the Police they had stated that people had gathered. It seems to me the incidents took place after dark. If some of them arrived on the scene, they arrived late, after people had gathered. It is difficult to believe that these witnesses did or could have identified the assailants an hour after dark even if there was some moon-light.

17. We have next the evidence of Kenchavva (exhibit 14).

She arrived there from her house on hearing the noise. She says as she approached and fell on the injured, she was -- assaulted and sent back. She identifies all the assailants as persons cutting her husband. She is the wife of deceased Shivappa, who had made an attempt on the life of accused No.6. Although there are certain injuries found on her person and her bodice produced appears to be torn, her evidence will have to be accepted with caution. She speaks of some of the assail ants assaulting her and dragging her after she had falled on her husband; but she is not able to identify who they wer. It is then difficult to see how she could have identified all the seven assailants of Shivappa.

18. We have next the evidence of Yellappa (exhibit 17), and the complaint filed by him at exhibit 18. He is an absolutely unreliable witness. He is the brother of the wife of Shivappa. He lived jointly with Mayappa, who had a Gang for ~~xxxxx~~ robbing the people. He says after he heard the row, he left the house and saw Kenchava go ahead. He saw accused cut Shivappa. Kenchavva fell and entreated the accused not to cut. Kenchava says as she was leaving the scene after she was made to go home, she saw Yellappa coming on the scene. He was 20 or 25 cubits away when fired at. Yellappa did not approach; but turned round and fled. He says in doing so, he recognised all the accused. It is impossible for him to do so. After this, he went and roamed in the village, but did not go to the Police patil. Then he returned to the scene. According to him there, deceased Shivappa -- gave him the names of his assailants. He then went to the Police Patil. The statement that shivappa gave him the names -- of these accused is obviously and after-thought. He did not mention this in his statement before the Police. Kenchavva who supports this statement of Yellappa had not made that statement when she was examined before the Police. Yellappa's complaint is silent on the point. There he does not say, he went to the shop, he saw the assault, or the accused or that he was fired at. He says I was at home. Accused cut Shivappa and he ran to the patil. Patil was not at home, and so he went

to the thrashing floor. He told him everything there. He does not speak of his roaming in the village, going back to the scene or Shivappa giving the names. It is obvious from the statements of the other witnesses examined that Shivappa could never have identified the accused. As his complaint contained the nemes of all the accused, the story of his going to scene before seeing the Patil and Shivappa giving him the names had to be invented. It is impossible to rely upon the evidence of Yellappa.

19. The prosecution has relied upon the dying declaration of Shivappa. If this declaration could be relied upon as true and voluntary statement of Shivappa, then it would be entitled to a great weight for, although the incident took place after dark on a moon-light night, as Shivappa was dragged, he was closest to the assailants and he could be expected to identify his assailants. When mortally wounded, one may not expect him to falsely implicate the accused. It is however, difficult to say that the dying declaration is a true and voluntary statement of Shivappa. Then declaration is at exhibit 20. It is nothing more than the enumeration of eight names and the statement that accused No.1, who showed a pistol and others cut. One would expect Shivappa to state something about the details or the mannér of the assault. This statement is recorded with the police patil exhibit 19, in the presence of panchas Exhibit 23, Kenchavva exhibit 14 and Yellappa exhibit 17. The evidence of these is, Shivappa made a statement; if was recorded and the patil and Panch say that Shivappa signed it. The writing bears no date or time. The explanation of the patil is that in a hurry, he did not put the date and time. The Panchas are ignorant persons who could just give their thumb-marks. The endorsement of the thumb-mark at exhibit 20 appears to be in different ink than the body of the writing and the signature of Shivappa Kannada Signature is so well written hat it is difficult to believe that Shivappa with his numerous injuries could,

with a fractured right fore-arm have made that signature, He had ten incised wounds on legs and hands. There was fracture of the left elbow and there were injuries on the palm of the fingures of the left hand. The Medical Officer stated at first that he did not think he could have signed, but revised his opinion by adding that he might have attempted and he might sign; but not in the ordinary manner. The signature at exhibit 20 is so well written that it is difficult to hold that the injured could have signed the paper when he was lying on the ground and turning on one side. It is peculiar to note that the writing states hardly anything except giving names and stating they cut. The names of all the accused are found there, but Shivappa does not speak of the presence of witnesses in his shop, of his being dragged or of what any of the accused did. Witness Yellappa stated that no one held Shivappa when he signed. But Patil and the Panch say that even Yellappa held him. Kenchawwa states that the statement was recorded, but no one signed it.

20. It was after recording this statement that the Police Patil made his report (exhibit 21). This report however, does not mention the fact that the statement of Shivappa has been recorded. It does not even say that Yellappa gave a complaint in writing. The answer to question No.5 consists of the mention of the names and - mention of the names of the witnesses. There is a line added "

". It is obvious that this sentence is an interpolation. The full-stop is altered into " " and this line is added. It is distinctly in different ink. No one has stated that Shivappa gave the names of the witnesses, Patil, when he was examined before the police, did not say, he got the names from Shivappa, but stated, that he learnt them on close inquiry. Although on the report of the Patil, and the complaint of Yellappa there is an endorsement of receipt and the date put by the P.S.I. there is none on the dying declaration or -

exhibit 22, which is said to be a forwarding Yadi. If the papers were sent with this Yadi, one would expect and endorsement to be made on the Yadi. It is not, therefore, possible to rely upon the dying declaration.

21. Then there remains the circumstance about the finding of a white shirt with stains of human blood in the house of accused Nos. 4 and 7, There is still another brother living with them in the same house. It is not known to whom the shirt belongs. The accused deny that it is theirs. From the finding of the shirt with stains of blood, it would be hazardous to connect any particular accused with the offence.

22. It is unfortunate that though there has been a brutle and merciless assault on Shivappa, the offenders cannot be punished. The evidence led to prove the guilt of the accused is unreliable. The dying declaration, the report of the patil and th complaint of Yellappa are all documents not free from suspicion. I fee hazardous to convict the accused on this evidence, though I suspect that some of these accused may have been responsible, for the infliction of the injuries. I, however, feel their guilt is not proved beyond doubt. I must, therefore, give benefit of doubt to the accused and acquit them of the offence with which they are charged.

23. In view of what I have stated above, the question of knowledge of intention of the accused in committing the acts does not survive.

## O R D E R .

I acquit all the seven accused of the offence with which they are charged.

28-2-1951. d/- V.R.Paralkar.

Additional Sessions Judge.

*True Copy*

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Compared by. Clerk of the Court.

Sessions Case No.65 of 1950. 13/63

The State

Vs.

1. Bharmappa Devappa Patil.
2. Babu Bharmappa Patil.
3. Jambu Bharmappa Patil.
4. Dharmappa Bharmappa Patil.
5. Parashuram Subrao Bhaskar.
6. Tavanappa Bharmappa Patil.

Heads of Charge to the Jury.

Gentlemen,

The six accused in the dock have been charged under ss 326,323, 324 and 302 read with s.34 I.P.C. These accused are the residents of the village Machhe which was then in Kurundwad State and now included in Belgaum Taluka. The Police Station for Machhe is Hadgaon. The accused no.5 is a resident of Belgaum and is referred to by the prosecution in the present case as Belgaumwala. It is alleged by the prosecution that on 18.6.1950, all these accused in furtherance of their common intention to beat the complainant Bhomani Dilekar and others who came to s.no.90 voluntarily caused grievous hurts with deadly weapons to three persons, namely, the complainant Bhomani Dilekar, Padmanna Gangai and Devakki wife of Savant Patil. Further, they voluntarily caused simple hurts to six persons , namely, Mallappa Dilekar, Bhomani Dilekar, Mallappa Bharmappa Dilekar , Bharma Basappa Dilekar, Yellubai wife of Bharmanna Dilekar and Gangubai wife of Bhomani Dilekar. Then in furtherance of the said common intention the accused voluntarily caused simple hurt with deadly weapons to Subrao Basappa Patil and also caused the death of Nagappa Bharmappa Dilekar intentionally. The accused are accordingly stated to have committed the offences punishable under the sections aforesaid. I would briefly narrate the prosecution story and the same is as follows:

2. The complainant Bhomani Dilekar was in possession

of s.no.90 within the limits of the village Machhe as a tenant of Devakki, wife of Savanta Patil since 1947 when he had passed a rent-note to Devakki (ex.5) for a period of one year and subsequently continued as her tenant. On the day of the offence, that is, on 18.6.1950 at about 9 a.m. the complainant went to this land as usual. On going there he found that all these accused were carrying on weeding operations in this land. He accordingly questioned them as to why they were in his land. In reply he was told that they had already obtained possession thereof. It transpires that this accused no.3 claimed to be the adopted son of Mallava in the family of Devakki. According to accused no.3, in virtue of this adoption he owndd two gadas (plots) of land in s.no.90 and that the same were under the cultivation of Padmanna as tenant of his adoptive mother Mallava. Eventually, he filed an application in the Court of the Tenancy Mamaatdar on 7.3.1950 against the said Padmanna. The Mamlatdar passed an order for delivery of possession on that application and in execution of that order, the possession of the land was delivered to accused no.3 by the Circle Officer on 17.6.1950. On the following day i.e. on 18.6.1950, as per story of the prosecution the complainant Bhomani went to this land, s.no.90 and found these accused carrying on weeding operations therein.When he questioned the accused as to how they happened to be there, he was asked in return where he had gone on the previous day. Thereupon, the accused who were armed with spears and lathis beat the complainant. After this complainant's son Mallappa came to the land but he was also beaten. Then the complainant's nephew the deceased Nagappa came to the land and he ~~wa~~ similarly came to be beaten. Several other persons of the complainant's party came there and they were also beaten. They were Padmanna Tippanna, Devakki wife of Savant Patil, Bhomani Ningappa alias Dhaklu Dilekar, Mallappa Bharmappa - the uncle of the complainant, Bharmappa Basappa the brother of the complainant, Yellubai the wife of Bharmappa Dilekar and Gangubai the wife of Bhomani the complainant. Other persons had also assembled at the time. After the attack was over, the accused

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nos. 2 and 5 went towards the village and accused 1, 3, 4 and 6 went in s.no.90 and sat there under a tamarind tree. Out of them, accused nos 1 and 6 were injured. In the meantime, the Police Patil of the village Machhe had made a report to the Police Station Wadgaon, that a breach of peace was apprehended on account of a dispute over the possession of a land between Subrao Patil and accused no.3. The P.S.I. received this report on the same day at about 10.40 a.m. from the Police Patil himself who had personally gone to the Police Station . The P.S.I. thereupon made an entry in the Station diary and proceeded to Machhe with a police party. He reached Machhe on the same day. Thereupon, he drew a panchanama of the scene of offence ex.21 and attached arts 1 to 4 under this panchanama from the scene of offence. He saw that 7 of the injured persons were lying at the scene of offence. He drew up a panchanama regarding the injuries to these persons ex.22 and sent them to the Civil hospital, Belgaum, for treatment. He found that accused nos 1, 3, 4 and 6 were sitting in s.no.86 out of whom accused nos 1 and 6 were injured. He also drew up a panchanama regarding their injuries which is not on record of this case. They were also sent to the Civil Hospital, Belgaum, for treatment. Before that the accused no.1 produced 4 sticks and sickles under the panchanama ex.23. These sticks and sickles are arts 25 to 30. Then the P.S.I went to the Civil Hospital, Belgaum, and recorded the statement of the complainant Bhomani Dilekar as the first information in this case ex.8 and thereupon the offence came to be registered. The accused no.1 also filed a cross-complaint. The S.I. of Police carried on the investigation during the course of which, he examined several witnesses and arrested the accused. After the investigation was completed, he sent up a charge sheet against these accused in the Court of the Addl.F.C.Magistrate, Belgaum. This was followed by the proceedings in the Court of the Addl. M.F.C. Belgaum. All the accused pleaded not guilty. On inquiry, the learned Magistrate found that there was a prima facie case against these accused and so he committed them to stand their trial in the Court of Session. In this Court

also the accused have taken a plea of not guilty. The accused nos 2 and 5 deny their presence at the scene of offence altogether and maintain that they had noting to do with the alleged occurrence and were not aware of the same. The accused nos 1, 3, 4 and 6 have to say in defence that the land in question belongs to accused no.3 who is the adopted son of Mallava and that he had secured possession of the same through the Circle Officer on the day previous to the offence in execution of the order of the Mamlatdar in the Tenancy ~~appiixax~~ proceedings as abovestated. On the day of the offence, they were carrying on weeding operations in this land in the morning. Just then the complainant and others came there in a body and obstructed them, as a result of which a fightensued. They deny that they were armed with any weapons. They also deny having beaten any of the complainant's party. The accused no.1 has to say about his injury that he was beaten by Subrao and after that he fell down and did not know what happened next. The accused no.6 who was also injured says that he was beaten by somebody as a result of which he fainted and did not know what happened next.

3. After having narrated the prosecution story and the defence version I would like to acquaint you with your duties as members of the Jury and also your duties as assessors. I must also tell you as to what the functions of the Judge are. The offences under ss. 326 , 323 and 324 are triable exclusively by a Jury while the offence under s. 302, that is, the offence of murder, is triable by the Court with the ~~aai~~ aid of assessors. Therefore, you hold yourselves in a dual capacity in this trial. You form a Jury so far as the offences punishable under ss. 326, 323 and 324 are concerned while you constitute yourselves as assessors in respect of the offence under s.302 I.P.C. Your duties as a Jury differ considerably from your duties as assessors. As members of the Jury, you are the sole judges on questions of fact. That means your decision on questions of fact is final so far as this Court is concerned. In case I come to the conclusion that your decision is perverse, that is, not in accordance with the evidence on record, then the only power the law has given me is to make a reference to the High Court. Since you are the sole judges on questions of fact,

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it is hardly necessary for me to tell you that you are in no way bound by any opinion that I may express in the course of summing up of this case. Of course, it will be my constant endeavour not to express any opinion on questions of fact, but in case I express any opinion on questions of fact, ~~but~~ and you do not agree with it, you are perfectly at liberty to ignore my opinion and stick up to your own independent opinion In arriving at a decision, you must entirely depend upon the material placed before you, that is the prosecution evidence, the statements of the accused and the property produced if any before the Court and must not allow yourselves to be guided by any extraneous considerations, such as mercy for the accused, or your own personal knowledge about this occurrence and so on and so forth. After considering all the evidence placed before you, if you come to the conclusion that the accused or any of them are really guilty, then it is your bouden duty to return a verdict that they are guilty without any fear or favour. If, on the other hand, you consider that the evidence on record is not sufficient to bring the charge home to the accused or leaves you in a state of reasonable doubt about the guilt of the accused, then also you must say that the accused are not guilty with the same fearlessness. Regarding questions of law, however, you are to be guided by me. That is to say, whatever directions I give you on points of law bind you and in the light of those directions, you have to appreciate the whole evidence in the case and come to a decision and after arriving at a decision, you as a Jury have to return your verdict through your Foreman and for that you are not to assign any reasons. As assessors, you stand on a different footing. You are required to give as assessors your individual opinions about the guilt or otherwise of the accused and support the same with reasons as far as possible. Further, your opinions as assessors, are not binding on me. That means, I may accept your opinions as assessors or I may not. But simply because your opinions are not binding on me as assessors, you need not go with the impression that your opinions have no value and, therefore, you need not bother

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much about the assessor-charge. If your opinions are based on proper appreciation of the evidence, then certainly they will be an asset to the Court in administering justice.So both as Jurors and assessors, you have to give your best attention to the facts and the law involved in the case and try to arrive at a proper decision.

4. Then I would like to explain some of the fundamental principles of criminal jurisprudence which it is necessary for you to understand in a criminal trial. The first principle is that the accused shall be always presumed to be innocent and it is for the prosecution to establish his guilt beyond all reasonable doubt. The accused may make a statement in defence or may not. But because he fuses to make a statement, you cannot infer that he must be guilty or because he is hauled up in a Court of Law to stand his trial in respect of a serious offence, you will not be justified in inferring that he is guilty. Why, the accused may even make a false statement in defence and yet it is ost open to you to draw any inference against him and that is why when their statements were recorded by me , no oath was administered to them. In short, the onus of proof entirely lies on the prosecution and it should be your concern to see whether the prosecution has discharged that onus to your satisfaction. This onus of proof never shifts to the accused unless the accused claims the benefit of the general exceptions laid down in the Indian Penal Code. If the accused claim the benefit of such Exceptions, then the onus of proof would be on them. For example, if the accused claims the right of private defence, then it is for the accused to place on record the circumstances showing that they are entitled to such a right. The accused may set up some theories here and there and yet may not lead evidence to substantiate the same. Nevertheless, it cannot be said that the burden of proof that lay on the prosecution is lessened in any way. So you have to find out for yourselves on going through the evidence whether the prosecution has discharged the burden that lies upon them. The next principle is that if after considering the whole material placed before you, you are not in a position to say one way or the other about the guilt of the accused, that is to say, at one moment you think that the accused are really guilty and at another

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mement you hold that they are innocent, which phenomenon is called a state or doubt, then the benefit of that doubt must go to the accused and they must be acquitted. But I must warn you Gentlemen, thatit is not every doubt that the law recognises as valid. The doubt that the law recognises is the doubt which can be entertained by a reasonable mind and not a doubt of a weak or vacillating mind or of a mind which refuses to come to any decision whatsoever.

5. Next I proceed to explain to you the standard of proof required in a judicial trial. In such a trial, you cannot expect a proof with mathematical precision just as two and two make four. The reason is not far to seek. You are aware that the witnesses who come to Court to give evidence are not educated to the same extent, they do not possess the same retentive memory nor are they gifted with the same power of observation. Having regard to these various reasons, it is impossible to expect a uniform story from the mouth of the witnesses and so it is possible that there should be some differences here and there in the evidence that they may give. But because of these *differences or discrepancies*, you cant jump to the conclusion that they are all liars. *The law expects you to discriminate* between these discrepancies. If the discrepancies are on minor points, then you can safely ignore them and look to the substance of the evidence. If they relate to the main part of the story, then they would certainly go to discredit that evidence. Then, in this connection, it is necessary for me to tell you that the witnesses who come to give evidence in the Court of Session are required to make statements on various occasions. First they are examined during the course of the investigation by the investigating officer.Sometimes their statements are recorded by a Magistrate during the course of the investigation under s. 164 Cr.P.C. just to pin them down so that they may not be tampered with by the other side. Then they are required to make statements in the Court of the Com. Magee and lastly, they make statements in the Court of Session. The previous statements of the witnesses under the law can be used for the

purpose of contradiction. The statements made before the Police and before the Magistrate during the course of the investigation, if used for the purpose of contradiction, cannot form substantive evidence but it will only show that what the witness is stating in the Court of Session is not true if he has made contradictory statements previously on a material point. The statements made by the witness in the C.M's Court are also sometimes admitted in the Sessions Court under s.288 Cr.P.C. and they form substantive evidence, but in this case no statement of the witness is admitted under s.288 Cr.P.C. Regarding theappreciation of the oral evidence, certain tests have been laid down. The first est is whether the witnesses who speak about the occurrence had seen the occurrence, i.e. to say whether they had an opportunity to see the occurrence if it could be seen. Then the second test is whether the witnesses who speak about the occurrence are interested in deposing to the same If you find that the witnesses could not be present at the time of the occurrence or are interested in stating that they had seen the occurrence, then their evidence could have no value and can be safely rejected as unreliable. The third test is whether the story narrated by the witness is probable. If the story on the face of it is improbable or does not stand the test of probability, then also the witness who speaks about such a story cant be believed. The law has adopted a very simple standard of proof and that is laid down in s. 3 Evid.Act. In this section, the definitions of proved, disprov and not proved are given. A fact is said to be proved when there is evidence from which it can be said that it exists or when it is cuh that a prudent man can say that its existence is probable. That is to say, if from the evidence placed before you, i.e. the prosecution evidence, the property produced, if any and the statements of the accused, you believe that a fact exists or if from the circumstances of the case, you as prudent men consider the existence of the fact so probeble that you should act on the supposition that the fact exists, then the fact is said to be proved. In other words, a fact can be proved either by direct or circumstantial evidence. Now the definiton of disproved is just the converse of

the definition of the term proved and so I need not say anything separately in regard to this. Further, a fact is said to be not proved, when it is neither proved nor disproved. This phenomenon would arise when you can neither say that the fact is proved, nor can you say that it is disproved. It is called a state of doubt to which I have made a reference just before this.

6. Then I must explain the sections under which the accused have been charged in this case. The accused have been charged as you will remember under ss. 326, 323 , 324 and 302 302 read with s. 34 I.P.C. The s. 323 I.P.C. lays down punishment for the offence of voluntarily causing hurt. The definition of hur is given in s.319 I.P.C., (section 319 read & explained). If a person causes disease, bodily pain or infirmaity to any person, is said to cause hurt.For example, giving a fist blow to another is said to be causing hurt. The expression voluntarily causing hurt is defined in s. 321 I.P.C. (read and explained). If a person does any act with the intention of causing hurt to any person and if he actually causes hurt to that person, then he is said to cause hurt voluntarily to that person. Sometimes there may not be an intention to cause the hurt butthere may be only knowledge that hurt is likely to becaused by the act and if hurt is caused with such knowledge, then also the act amounts to the act of voluntarily causing hurt.So the voluntarily causing hurt depends upon the intention or knowledge of the person who does the act. The punishment for the offence of voluntarily causing hurt is laid down in s. 323 I.P.C. as already stated. S.324 I.P.C. lays down punishment for voluntarily causing hurt by dangerous weapons or means and therefore the offence for which the punishment is laid down in s.324 is graver than the offence punishable under s.323 I.P.C. Dangerous weapons or means will include any weapon by which it is inherently possible to kill another.For example, a knife, an axe, a gun and so on and so forth. A lathi may be a dangerous weapon if by it death may be caused of another person. That would depend upon the size of the lathi. In short the weapons in order to be called as dangerous weapons must have

the potentiality of causing death of another person. The section 325 I.P.C. lays down punishbment for the offence of voluntarily causing grievous hurt and the section 326 prescribes punishment for the offence of voluntarily causing grievous hurt by dangerous weapons or means. The definition of grievous hurt is given in s. 320 I.P.C. In this section 8 varieties of hurt are given which are designated as grievous hurts. We are concerned in this case with only one of them. A fracture or dislocation of a bone amounts to a grievous hurt. If the injury caused involves a fracture of a bone, then it amounts to a grievous hurt. This is sufficient for you so far as the present case is concerned. The last section is section 302 I.P.C. This section lays down the punishment for the offence of murder. The definiton of murder is given in s. 300 I.P.C. In order to know what murder is, you must know the meaning of culpable homicide. Culpable homicide is defined in section 299 I.P.C. (Section 299 I.P.C. read & explained). For the offence of culpable homicide the death must have been caused by the act with the intention of causing death, or with the intention of causing subh bodily injury as is likely to cause death, or with the knowledge that by that act the death is likely to be caused. Sulpable homidie is agenric term and the murder is a species of this term. That means every murder is culpable homic: but every culpable homicide is not murder. Culpable homicide amounts to murder as laid down in s. 300 I.P.C. (read and explained). Under this section there are certain Exceptions recognised and if the act of causing the death of another person fallsunder any of these Exceptions, then it is not murder. Culpable homicide amounts to murder, subject to these exceptions, if the act by which the death is caused is done with the intention of causing death, or with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or with the knowledge that the act is

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so imminently dangerous that it must, in all probability, cause death or subh dobily injury as is likely to cause death and commits such act without any excuse for incurring the rikk of causing death or such injury. When there is an intention to kill, the offence is always murder. In cases where there is only an intention to cause injury, difference between culpable homicide and murder is done of degree of probability of death. The offence is culpable homicide if the bodily injury intended to be inflicted is likely to cause death. It is murder if such injury is sufficient in the ordinary course of nature to cause the death. It is not possible to expect direct evidence about the intention. The intention is to be gathered from the circumstances of the case for example, the weapon used, the part of the body hit with that weapon and so on. Because the intention is always deep buried in the mind of the man. It is only by such overt acts and the circumstances that you can gather the intention of the man. I have told you that s. 302 I.P.C. layd down the punishment for the offence of murder. But when culpable homicide does not amount to murder, the punishment for the same is laid down section 304 parts I and II. Before going to s. 304, parts I and II, I may draw your attention to the relevant exception under s. 300 I.P.C. The exception 2 to section 300 says :

> "Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence "

If while exercising the right of private defence of body or of property, a person with the intention of causing death or of causing such bodily injury as is likely to cause death, causes more harm resulting in the death of another person, then the offence would fall under this exdeption and would be punishable under s.304 part I. (Sections 304, parts I and II read). If the right of private defence of body or property is exceeded and death is caused but without any intention to cause death or subh bodily injury as is likely to cause death

but merely with the knowledge that the death is likely to be caused then the case would fall under exception 2 to section 300 and the offence would come down to section 304, part II I.P.Code.

7. Then remains section 34 I.P.C. Section 34 I.P.C. does not lay down any independent offence. It only explains that is known as constructive liability for the acts of others. (Section 34 I.P.C. read and explained). For the applicability of s. 34 , it must be proved that the persons who are sought to be made liable constructively share the common intention with the actual perpetrators of the act and that the act was done in furtherance of that common intention. I may tell you that intention cannot be proved by any direct evidence because it is deep buried in the mind of a person and can be seen only overt acts. So in order to find out what the common intention of the offenders was, you must look to the circumstances and the evidence in the case.

8.As the learned pleader for the defence has claimed the right of private defence of both person and property, in respect of accused nos 2,1, 3, 4 and 6, I would like to explain to you the law of private defence. S. 96 I.P.C. lays down one of the general exceptions in the I.P.Code. It says that noting is an offence which is done in the exercise of the right of private defence. Regarding the genesis of this right of private defence, I may offer a few remarks. The law expects the people to be brave and see that they may not meekly submit to the atrocities committed by the offenders and in orderto foster a spirit of self-help the framers of the Code have introduced a right of private defence of body and of property. They were convinced that the Magistracy will not be an adequate protection to the persons who stood in immediate danger of being attacked or who stood in immediate danger of losing their property; and, therefore, it was necessary according to them to encourage a manly spirit among the people in order to put a stop to suchdepredations. In this way the right of private defence came to be recognised and place on the statute and accordingly nothing is an offence which is done in exercise of the right of private defence. Section 97 I.P.C. speaks about the right of private

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defence of the body and of property. (S.97 read and explained). Every person has a right, subject to certain restrictions, to defend his own body and the body of any other person against any offence affecting the human body and to defend property whether moveable or immoveable of himself or of any other person against any act which is an offence falling under the definitions of theft, robbery, mischief or criminal trespass or which is an attempt to commit theft, robbery , mischief or criminal trespass. The definition of criminal trespass is laid down in s. 441 I.P.C. (S.441 I.P.C. read and explained). Then I go to s. 99 which lays down certain restrictions upon this right (S.99 I.P.C. read and explained). Among other things, this section says that there is no right of private defence in cases in whic there is time to have recourse to the protection of the public authorities. Suppose in case of any eventuality, you have got enough time to approach the public authorities, then you have no right of private defence and you cannot take the law into your own hands. But you must approach the authorities for the protection. There is one more restriction and that says that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of the defence. You must inflict such harm as is necessary for the purpose of defence and if you exceed that limit, then you forfeit the right. Then I go to section 100 I.P.C. (read and explained). The right of private defence of body extends even to the causing of death in certain circumstances and those circumstances are laid down in s. 100 I.P.C. The first circumstance is that if the offence which occasions the exercise of the right be such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault. Then the second circumstance is that if the offence which occasions the exercise of the right be such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequenc of such assault. There are also other circumstances with which we are not concerned in this case. If the offence be not of any

of the descriptions enumerated in section 100, the right of private defence of the body does not exceed to voluntary causing of death to the assailant, but does extend, subject to the restrictions laid down in s.99, to the voluntary causing to the assailant of any harm other than death. This is what is laid down in s. 101 I.P.C. The section 102 I.P.C. says about the commencement of the right of private defence of body and the continuance thereof. (Section 102 I.P.C. read and explained). The right of private defence of body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed and it continues so long as such apprehension of danger to the body continues. Now in order to ascertain whether an excess has been committed in exercise of this right, you must make certain allowance for the confused state of mind in which the person exercising the right is placed. You must not expect him to weigh the circumstances requiring him to exercise the right of private defence in golden scales. A very strict standard of excess cannot be adopted in such a case. The excess, if any, will have to be ultimately determined in the light of the circumstances of the particular case. The section 103 I.P.C. lays down as to when the right of private defence of property extends to the causing of death (Section 103 I.P.C. read and explained). In cases of apprehsnion of offences, even death may be caused to the person concerned in exercise of the right of private defence of property. We are not concerned with these offences in the present case. The section 104 I.P.C. says when such right extends to the causing of any other harm other than death. (S.104 read & explained). In case of a criminal trespass, which term is defined in s. 441 I.P.C. as entering into or upon the property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property etc, the right of private defence of property extends to the causing of any other harm short of death, of course subject to the restrictions imposed by s.99 I.P.C. According to s.105 I.P.C. the right of private defence of property against criminal trespass continues so long as the offender

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continues in the commission of the criminal trespass.

9. Now, you have to consider the evidence placed before you in the light of the law explained to you separately against each of these accused and decide as to whether they, or any of them, are guilty and if so, of what offence. It is admitted by the learned pleader for the defence that grievous hurts and simple hurts came to be caused to the persons mentioned in the charge that day. It is also admitted that Subrao Patil received a simple hurt with deadly weapons on that day. Further, it is admitted that Nagappa, the deceased also received injuries on that day and died as a result thereof. Apart from this, you have got on record the medical evidence given by Dr.Joshi of the Civil Hospital Belgaum. You have also on record the various panchanamas regarding the injuries caused to these persons including the inquest panchanama. Then the panchanama about the scene of offence would also point out that seven of these persons were lying injured at the scene of offence who were subsequently sent to the Civil Hospital, Belgaum, for treatment. The post mortem notes prepared by Dr.Joshi point out that the deceased Nagappa died as a result of injuries which were all ante-mortem. In the opinion of Dr. Hoshi, the death of the deceased Nagappa was due to shock and haemorrhage as a result of the fracture discovered and this fracture was of the skull. The defence pleader even concedes that these injuries to the various persons were caused at the hands of accused nos 1, 3, 4 and 6 or some of them. His only contention is that accused nos 1, 3, 4 and 6 acted in exercise of the right of private defence of the person and ofproperty, namely, the portion of s.no.90 of the village Machhe. He further contends that accused nos 2 and 5 were not present at the time of the occurrence. Then, in the alternative, he maintains that if this right of private defence is exceeded, the accused nos 3 and 4 only would be liable for the grievous hurts and the death of the deceased Nagappa and that as they had no intention to kill Nagappa or any knowledge that he would die, the offence would come down to s. 326 I.P.C. and

that it would further come down to s. 335 as there was grave and sudden provocation. I may mention here that section 335 I.P.C. lays down punishment for voluntarily causing greivous hurt on provocation. I have already told you that ordinary griecous hurt is punishable under s.325; grievous hurt with deadly weapons is punisahble under s.326 and when grievous hurt is caused on provocation, then the punishment for the same is laid down in s. 335 I.P.C. So according to the learned pleaderfor the defence only accused nos 3 and 4 would be liable under s. 335 I.P.C. in respect of grievoud hurt caused to the persons mentioned and in respect of death of Nagappa and the other injuries punishable under section 323 and 324 would be within the right of private defence and that would not amount to an excess.

10. Before proceeding to deal with the prosecution evidence, regarding the occurrence, it is necessary for you to determine whether the accused no.3 and for that matter his brothers and father were in possession of the portion of s.no.90 on the day of the offence. The case of the complainant Bhomani Dilekar is that he was already in possession of this land as a tenant of Devakki since 1947 when he passed a kabulayat ex.5, while the case of accused no.3 is that this land belonged to his adoptive mother Mallavva and Padmanna was cultivating this land as a tenant of Mallavva, that after his adoption by Mallavva, as Padmanna did not pay rent, he filed an application in the Court of the Tenancy Mamlatdar and obtained an order for possession of this land and that eventually on 17.6.1950, the Circle officer in execution of the Mamlatdar's order delivered possession of this land to him. The accused 3 has produced a copy of the applic ation made to the Tenancy Mamlatdar. the order passed by the Tenancy Mamlatdar on this application and the panchanama regarding the delivery of possession to accused no.3 of this land on 17.6.1950. It is urged by the prosecution that the complainant Bhomani Dilekar was not a party to this proceeding and, therefore, the possession delivered was not lawful. The real question involved for your decision is whether

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the accused no.3 was a trespasser. If the accused no.3 is in possession of the land bona fide, then he cannot be called a trespasser. In the present dase the accused no.3 was put in possession of the land by the Govt.official as per order of the Tenancy Mamlatdar and so it can be held that he was bona fide in possession of the land after the delivery of possession thereof on 17.6.1950. If the complainant is aggrieved by the order of the Mamlatdar, it is for him to take legal steps. But he cannot take the law into his own hands. It may be also noted in this connection that according to accused no.3, the land claimed by him in the tenancy appln was a part of s.no.90 and not the whole of it and this part consisted of two plots (gadas). It was pointed out by the prosecution that s.no.90 stood inthe name of Devakki's minor son in revenue records. The reply of the defence was that as the adoption of accd 3 was recent, and as he claimed only a portion of s.no.90, the fact that s.no.90 stood in the name of Devakki's minor son was not material. The defence also made a reference to ex.21 which is a panchanama of the scene of offence in which it has been pointed out that the fight took place in a portion of s.no.90 to the west of which was the land of Devakki, From this the learned pleader for the defence asserted that the land claimed by accused no.3 was different from the land in possession of Devakki and as this land was given on lease to Padmanna who was a party that proceeding, the delivery of possession was properly given to accud no.3. The defence also submitted that the complainant Bhomani Dilekar might be perhaps the subtenant of Padmanna. At any rate, it has to be seen whether the accused were in possession of the land under a claim of title bona fide on the day of the offence. If they are so in possession of the land, then they can protect this possession till ousted by due process of law. On the day of the offence admittedly, the accused nos 1, 3, 4 and 6 were carrying on weeding operations in this land. There is a dispute about the presence of accused 2 and 5 but about that we shall see later on. Then according to the prosecution evidence, the complainant came to the land and after him the complainant's son Mallappa

came. He was followed by the complainant's nephew deceased Nagappa, and several other persons who were injured on that day. While it is the case of the accused that all these persons learning that accused no.3 and others had gone to the land to carry on weeding operations, came in a body and obstructed and then the fight ensued. If the complainant and others came to this land and obstructed the accused who were carrying on weeding operations, then the complainant and his party would be aggressors and the accused would get a right of private defence of person and property. They would get the right of private defence of person if the complainant and his party threatened to co mit an offence against the body. They would get the right of private defence of property if the complainant and his party tried to obstruct accused no.3 and his party in carrying on the weeding operations. The difference between the prosecution and the defence version is whether they came one after another or they came together. As regards this, it has been elicited in the cross-examination of Mallappa Bhomani, the son of the complainant, by contradicting him with the statement before the Police that on Sunday morning, that is, the morning of the day of the offence after learning that accused no.3, his father and brothers were carrying on weeding operations in the land of Devakki cultivated by them, himself, his father, his mother and Devakki went together to the land. Devakki (ex.17) has also stated before the Police that after her tenant Bhomani learnt that the accused had gone to her land for carrying on weedding operations, he, that is, Bhomani, the complainant, his wife Gangava, his son Mallappa and herself went together to the land. In this Court, these two witnesses have given evidence to say that they went one after another. I have told you already about the effect of the contradiction brought forth by use of the statement before the Police. The statements before the Police do not form substantive evidence and they go to falsify the statements made by the witnesses before the Sessions Court. So you have to appreciate the statements made by these and other prosecution witnesses in this respect by applying your own commonsense. You have to

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see whether the complainant's party would come in a regulated manner one after another or in a body after learning that the accused were carrying on weeding operations in the land in dispute. I have already told you that one of the tests to appreciate the oral evidence is the test of probability. Whether the story narrated by the prosecution witnesses that the complainant and others went one after another to the land and then the occurrence took place or whether the defence suggestion that they came together is more probable is for you to consider. All the same whether they came in a body or they came one after another makes very little difference. The question is whether the complainant and others obstructed the accused who were in possession. In that event only the accused would have the right of private defence. As regards the private defence of the body, there is nothing on record to show that the complainant, or any of the members of the party were armed with any weapons. All the same it is in evidence that accused nos 1 and 6 were injured. According to the prosecution they got these injuries in the tumult while accused 1 says that he was beaten by Subrao while accused no.6 says that he does not know who beat him. There is no evidence to show that the complainant and his party came to attack the accused or actually attacked them. It is for the accused to place all the circumstances on record to establish the right of private defence of body or of property. As regards the private defence of body, this is the state of the evidence which I have just explained. In respect of the private defence of the property, I have narrated to you all the circumstances appearing in the evidence.

11. The prosecution has examined some eight witnesses including the complainant on thepoint of this occurrence. They are the complainant ex.4, Bhomani Huvanna ex.9, Somanna Belgaumkar (ex.11), Payanna Huded ex.13, Mallappa Dilekar ex.14, Mallappa Bhomani ex.15, and Mallappa Chanappa ex.16 and Devakki ex.17. Out of them you can at once say that the complainant and Devakki have their own axe to grind. that means, their evidence would be interested as against the accused. Then the witness

Mallappa Bharmanna is none else than the nephew of the complainant. The witness Mallappa Bhomani is the son of the complainant. This leaves Bhomani Huvanna but it is in his evidence that he is a relative of Dhaklu alias Ningappa who was one of the injured persons and of the complainant's party. So he stands on the same footing as that of the complainant and his relatives. The next witness is Somanna ex.11. Bhomani Huvanna has stated that he and Somanna are cultivating a land jointly. So you will have to consider the evidence of these witnesses with some caution and this caution was rightly given to you by the learned A.P.Prosecutor in his argument. Then the witnessPayanna is there.All these witnesses support the prosecution story that the injured persons came one by one and they were attacked.So the attack is admitted. I will not enter into the details of the evidence of these witnesses except when I deal with the attack on Nagappa.

112. Now you will have to determine whether the prosecution has proved the alleged participation of accused nos 2 and 5 in the occurrence. I have already told you that accused nos 2 and 5 claim that they were not aware of the occurrence at all, that is to say, they were not at the scene of offence when the occurrence took place.

113. I would first take up the case of accused no.5. This accused no.5 was from Belgaum. Admittedly, he was not known to any of the prosecution witnesses before the offence took place.It transpires from the evidence of Payanna that an identification parade was held in regard to this accused but the prosecution has not placed the evidence of the identification parade before the Court. As a matter of fact, it was necessary for the prosecution to lead the evidence of identification in the first instance to prove the case against the accused no.5. But that material evidence has been withheld for reasons best known to the prosecution itself. The result is that accused no.5 is only identified in Court by the various prosecution witnesses as being one of the persons who participated in the attack. The position of law is that the identification of the accused in the Court, unless it is preceddd by an identification in the parade has no value. Then again, it is pointed

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xgainx out by the learned defence pleader that in the first information (ex.8) two Belgaumwalas are mentioned as being among the offenders. He, therefore, argues that ix it may perhaps be a case of mistaken identity or at any rate there is no guarantee according to him that accused no.5 is the Belgaumwala concerned in the commission of the offence. Possibly the other one may be concerned. If you think that in view of this state of evidence against accused no.5, the case against him is doubtfu, then you will be justified in giving him the benefit of doubt and acquitting him in consequence thereof.

14. The accused no.8 is the son of accused 1. He ix has stated that he is trading at Belgaum and that he was not present at all at the time of the offence. However, all the prosecution witnesses depose that he was one of the offenders who were present in the land on that day. As a reply to this evidence of the prosecution, the learneddefence pleader pointed out that in the first information, the part alleged to have been played by accused no.2 was not mentioned, when the part played by/accused xx.was mentiondd therein. He also pointed opt that when the P.S.I. arrived at the scene of offence, he found only accused 1, 3, 4 and 6 closeby and not accused nos 2 and 5 and so, according to him, the accused nos 2 and 5 must not have been there. The learned defence pleader particularly urged that accused no.6 was injured considerably and accused no.1 remained there just to look after him and so the accused no.2 would have remained to attend on accused no.6 and would not have run away from the place.So these are the two versions, one for the prosecution and the other for the defence regarding the alleged participation or otherwise of accused no.2 . It is for you to consider as to which appealsto you more.

13. If you hold that these accused had a right of private defence of body or property or property only, then you will have to determine whether the harm xxxxxxx caused was justifiable. I have told you already that if criminal xxxpxxx trespass is apprehended or is being committed, then any harm short of death may be caused. But the harm must be

just sufficient to ward off the criminal trespass and must continue so long as the trespass continues. Applying this test, you have to see whether the accused would be justified in causing the simple hurts and simple hurts with dangerous weapons or not. Then also you have to consider whether they would be justified in causing the grievous hurts with deadly weapons in exercise of the private defence of property and if they are justified in causing the simple hurts or simple hurts with deadly weapons or grievous hurts, then they would not be liable for the offences under ss. 323, 324 and 324. Then if they have apprehended death or grievous hurt to themselves, then they can even cause the death of the assailants. I have told you already that there is no material on record as to whether the accused apprehended death or grievous hur. It therefore follows that the causing of the death of Nagappa would be in excess of the right of private defence and if there is any excess, then you will have to find out as to who are liable for the same. The persons who actually caused the death would be obviously liable and those who have not caused the death, it will have to beseen whether they had any common intention with those who caused the death and if they had any such common intention, all of them would be liable for the causing of the death on the principle of constructive liability mentioned in section 34 I.P.C.

16. Now I will place the evidence regarding the attack on Nagappa before you and you find for yourselves as to who caused the death of Nagappa Many of the prosecution witnesses have stated in the course of their evidence that all the accused attacked Nagappa. Some of them have stated that accused no.2 only attacked. The learned A.P.P. ultimately in his argument told you that accused 2, 3 and 4 would be only responsible for the attack on Nagappa. But all the same, the responsibility is upon you to appreciate the evidence on the point and determine for yourselves as to who must be responsible for the actual attack on Nagappa. The complainant Bhomani Dilekar has stated that accused nos 2 and 3 beat Nagappa with nailed sticks and added that they pierced the nailed sticks into his head. He has further stated that the other

accused also beat him. According to the complainant all the accused beat Nagappa. Then Bhomani Huvanna has stated that accused nos 2, 3 and 4 beat Nagappa on the head with spear sticks and after this accused nos 1 and 6 beat him. So he excludes only accused no.5 from the persons who beat Nagappa. The statement of this witness was recorded under s.164 Cr.P.C. in the course of the investigation before a Magistrate and therein he has not referred to the attack on the deceased Nagappa by the other accused except accused no.2. In this Court he has stated that all the accused except accused no.5 beat Nagappa.So it is for you to determine whether in view of his previous statement, you should accept the statement that all the accused except accused no. 5 attacked Nagappa.

17. The next witness Somanna (ex.11) says that all the accused beat Nagappa. The statement of this witness was recorded under s. 164 Cr.P.C. and therein he has not referred to accused nos 1 and 3 to 6 as the assailants of Nagappa. That means, according to him, when he made that statement, accused no.2 only attacked Nagappa.

18. Then comes the witness Payanna (ex.13). He says all the accused beat Nagappa. First accused nos 2 to 4 beat with sticks and then the other accused beat him with lathis. But in his statement before the Police he has stated that accused no. 4 only gave three blows to deceased Nagappa and has not referred to any other accused as the assailants of Nagappa.

19. Then the next witness is Mallappa Bharmanna (ex.14), that is, the nephew of the complainant He says that accused nos. 2 to 4 beat Nagappa and also accused nos 1, 5 and 6. That means all the accused beat Nagappa. But he has not stated before the Police that accused nos 1, 5 and 6 attacked Nagappa.

20. Then comes the witness Mallappa Bhomani, the son of the complainant (ex.15). He has stated that accused nos.2 to 4 beat Nagappa and also the other accused beat him. That

means all the accused beat Nagappa. But he has not stated before the Police that accused nos. 1, 5 and 6 beat Nagappa.

21. Then comes the witness Mallappa Channappa (ex.16). He says that accused nos 2 to 4 beat Nagappa but he has not stated before the Police that accused nos 2 and 3 were among the assailants of Nagappa. So you may consider all this evidence and see first whether accused no.2 was one of the assailants of Nagappa. Of course, I may tell you in this connection that even if you disbelieve the evidence of some of the witnesses and believe the evidence of one witness, it is sufficient to establish a fact. It is not the quantity of the evidence that counts but it is the quality.

22. From this evidence, you have to find out as to which of the accused attacked Nagappa and then determine whether the others could be held liable for the attack on Nagappa, having regard to section 34 I.P.C. That could be done only if all had a common intention of attacking. If there was such a common intention, then all would be liable. The question is whether there was a common intention and whether they shared that common intention. This is entirely within your province. In the absence of such common intention, only those who actually attacked would be only liable and not the others.

23. If you determine that particular accused were responsible for the death of Nagappa, either directly or constructively, then you shall have to find out as to what offence they will be deemed to have committed. The learned A.P.Prosecutor had urged that they would be guilty of the offence under section 304, part I, I.P.C. which prescribes punishment for the offence of culpable homicide not amounting to murder when the death is caused with the intention of causing death or of causing such bodily injury as is likely to cause death. I have already told you that if the right of private defence is exceeded, then the offence would come down to section 304, part.I. But the learned defence pleader has urged that there is neither an intention to kill nor the intention to cause an injury which was likely to cause death. He also urged that there would not be even the knowledge on the part of the assailants of

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Nagappa that death would be caused, and thererore, the offence would come down to s. 326 and because there was grave and sudden provocation, it will further come down to section 325 I.P.C. In this connection you will have to refer to the medical evidence. Nagappa had three injuries on the head and his kull was fractured. Dr.Joshi has stated that the death of Nagappa was due to shock and haemorrhage as a result of the fracture of the skull but he could not say as to which of the three injuries was responsible for the fracture. The intention is to be gathered from the circumstances of the case, viz., the weapons used, the part of the bbdy hit and so on and so forth. Here the part of the body hit was the head which is considered to be a very vital part. Of course the prosecution has led evidence to show that he was beaten with spears but the medical evidence does not show that there were any incised injuries. According to the medical evidence, these injuries of Nagappa could be caused by hard and blunt substance like a stick. So relying on the medical evidence, these injuries of Nagappa would be caused by hard and blunt substance like a stick.So relying on the medical evidence, if you find that only simple sticks were used, you have to find out what the intention of the assailants must be. It is conceded that there was no intention to cause such bodily injuries as were likely to cause death. If there was the intention to cause bodily injury likely to cause death, then the offence would fall under s. 304 part I I.P.C. If there was only knowledge that death was likely to be caused, then it would fall under section 304, part II, I.P.C. In that case section 34 I .P.C. would not apply and only those who caused the death of Nagappa would be alone liable, because s.34 is based upon intention and not knowledge In case you find that there was neither the intention to cause death nor knowledge that death would be caused, then offence would in the first instance come down to s.326 I.P.C. and if you further hold that there was grave and sudden

provocation, for the accused to commit this assault, then it would still come down to s. 335 which lays down punishment for the offence of grievous hurt on grave and sudden provocation. You have to see whether there was such grave and sudden provocation in this case. The grave and sudden provocation must be such as would deprive the man of all self-control. You have to determine whether the alleged obstruction set up by accused to the complainant and his party was sufficient to lose their self-control altogether and if you hold that it must have caused loss of self-control on the part of the accused, then it would be grave and sudden provocation within the meaning of section 335 and in that case, the offence would come down to s.335 I.P.C. As regards s.323, 324 and 326, I have already explained the position to you. It is conceded by the learned pleader for the defence that if the accused had a right of private defence, the grievous hurts in this case would not be a justifiable harm. In this connection, you should note that accused nos 1 and 6 were themselves injured. They are stated to have participated in causing the grievous hurts along with the other accused. You have to analyse all the evidence and decide which of the accused or any of them are guilty and if so, of what offence.

24. Gentlemen, I have done. I have placed before you the evidence and the law involved in the case. You have to consider the same very carefully and try to come to a proper decision. As regards the Jury charge, you have to return your verdict through your Foreman. As regards the assessor-charge, you shall have to express your individual opinion with reasons for the same. You may now retire and consider your verdict as a Jury and your opinion as assessors.

31 st January 1951. Sd. D.S.Lupane.

Extra Addl.Sessions Judge.

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Verdict of the Jyry.

The Jury returned after an absence of 70 minutes.

Shri. Foreman.

Q. Are you allunanimous ?
A. Yes. ~~xxxregards~~ in respect of accused nos. 2, 3, 4 and 5 but divided in respect of accused nos 1 and 6.

Q. How are you divided regarding accused 1 and 6 ?

A. Three~~s~~ to two ( 3 to 2).

Q. What is your verdict regarding accused nos 2, 3, 4 and 5.

A. The accused nos 3 and 4 are guilty under section 326 I.P.C. only. The accused nos 2 and 5 are not guilty.

Q. What is your majority verdict regarding accused nos 1 and 6.

A. The accused nos 1 and 6 are not guilty.

Sd. D.S. Lupane.
Ext.Addl.Sessions Judge.

31.1.1951.

Opinions of the Jurors as assessors.

Shri. R.A. Chate.

Q. What is your opinion ?

A. The accused nos 3 and 4 are guilty under s. 304, part II of the I.P.C. The others are not guilty

Q. What ~~is~~ your reasons ?

A. There was no intention to kill. There was no intention to cause injury likely to cause death as well. The right of private defence is conceded to the accused.

Shri. H.A. Nargund.

Q. what is your opinion ?

A. I am of the same opinion.

Q. What are your reasons ?

A. My reasons are the same.

Shri. S.S. Malshetti.

Q. What is your opinion ?

A. I am of the same opinion.

Q. What are your reasons ?

A. My reasons are the same.

Shri. M.V. Bapshet.

Q. What is your opinion ?
A. I am of the same opinion.

Q. What are your reasons ?
A. My reasons are the same.

Shri. N.B.Bhandari.

Q. What is your opinion ?

A. I am of the same opinion.

Q. What are your reasons ?

A. My reasons are the same.

31.1.1951. Sd. D.S. Lupane.

Ext.Addl.Sessions Judge,
Belgaum.

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Judgment.

The six accused in this case have been charged with offence punishable under ss. 326, 323, 324 and 302 read with section 34 I.P.C. The offence under sections 326, 323 and 324 were triable by a Jury and that under section 302 was triable by me with the aid of assessors. So a Jury consisting of five persons was empanelled who also acted as assessors. The prosecution case and the defence version have been set out in my Charge to the Jury. On evidence the Jury gave a unanimous verdict regarding accused nos 2, 3, 4 and 5 to the effect that accused nos 3 and 4 were only guilty and that they were guilty under section 326 I.P.C. As regards accused nos 1 and 6, the Jury was divided by 3 to 2 and their majority verdict was that they were not guilty. Thus, according to the verdict of the Jury, the accused nos 3 and 4 were guilty under s. 326 only and that the other accused were not guilty. The Jury acting as assessors unanimously opined that accused nos 3 and 4 were only guilty under s. 304, part II I.P.Code and the others were not. The assessors gave common reasons for their opinion. In substance they held that the accused acted in exercise of the right of private defence which they exceeded in causing the death of the deceased, but there was no intention to kill the deceased nor was there any intention to inflict such injury as was likely to cause death. They,however, seem to have thought that there was knowledge on the part of these accused that the death would be caused.

2. The verdict of the Jury appears to be reasonable and I agree with the same.

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3. The assessor-charge is under section 302 read with section 34 I.P.C. It is not disputed that the deceased Nagappa died a homicidal death during the occurrence. The inquest panchanama and the medical evidence furnish a clear evidence on the point. It must be now seen as to which of the accused actually caused the death of the deceased Nagappa. On evidence the learned A.P.P. urged that accused nos 2, 3, and 4 caused the death of the deceased Nagappa. As against this view, the learned defence pleader maintained that accused nos 3 and 4 would be only implicated in this behalf. Thus the dispute in this connection centres round the complicity or otherwise of accused no.2. The accused no.2 is the son of accused no.1 and the brother of accused nos 3, 4 and 6. However, it is the case of accused no.2 that he has been trading at Belgaum away from the village Machhe where the offences in question took place and that he was not present at all at the time of the commission thereof. It was pointed out by the learned pleader for the defence that in the first information (ex.8), though the name of accused no.2 is mentioned, the part played by him is not disclosed, unlike the other accused. He further pointed out that when the Police S.I. arrived at the scene of offence soon after the occurrence, only accused nos 1, 3, 4 and 6 were found in a neibhbouring field and not accused no.2. It is in evidence that accused nos 1 and 6 were injured during the course of the occurrence, out of whom accused no.7 6 was injured during the course of the occurrence, out of whom accused no.6 was injured rather seriously. The learned defence pleader argued that accd 6 was being attended to after the occurrence in the neighbouring field and that if accused no.2 was present at the time of the occurrence, he would not have left the place and gone to the village as alleged by the prosecution leaving his injured father and brother , namely, accused 1 and 6 in that condition, but would have stayed on to attend on them. All the seven prosecution witnesses on the point namely, the complainant Bhomani (ex.4), Bhomani Huvanna (ex.9), Somanna (ex.11), Payannaó ex. 13), Mallappa Bharmanna (ex.14)

Mallappa Bhomani (ex.15) and Mallappa Channappa (ex.16) implicate accused no.2 in this Court as one of the assailants of the deceased Nagappa. The evidence of two of these witnesses is contradicted by their statements before the Police on the point of accused no.2's alleged complicity. The witness Payanna (ex.13) claims to be present throughout the occurrence. However, he has not referred to accused no.2 before the Police as the assailant of the deceased Nagappa. Further, the witness Mallappa Channappa (ex.16) who also claims to be present when the deceased Nagappa was attacked, has not mentioned the name of accused no.2 before the Police as the assailant of the deceased Nagappa. The statement of the witness (ex.11) Somanna was recorded during the course of the investigation under s.164 Cr.P.C. and so his evidence would require corroboration before it can be acted upon. The witness Bhomani (ex.9) sails in the same boat as the witness Somanna (ex.11). The remaining witnesses are none else than the complainant Bhomani (ex.4), his nephew Mallappa Bharmanna (ex.14) and his son Mallappa Bhomani (ex.15), whose evidence cannot be regarded as independent in view of a dispute over a land between the family of the complainant and that of accused no.2, which gave rise to this offence. Having regard to this state of evidence against accused no.2, the circumstances relied upon by the learned defence pleader in this behalf and referred to above, gain considerable support and create a reasonable doubt in regard to the alleged complicity of accused no.2 in the offences under consideration. I therefore conclude that accused nos 3 and 4 were the only persons who attacked the deceased Nagappa and caused his death.

4. Then the question arises as to what offence the accused nos 3 and 4 have committed in causing the death of the deceased Nagappa and whether the other accused can be held responsible for the same constructively under s. 34 I.P.C.

5. As indicated in my Charge to the Jury, the accused no.3 was put in lawful possession of the particular portion of s.no.90 by the Circle officer on the previous day of the offence in execution of the order of the Tenancy Mamlatdar.

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This possession was to all intents and purposes lawful. The complainant and his party, however, obstructed the accused no.3 and his people when they were carrying on weeding operations in this land on the day of the offence and as a result thereof, the occurrence in question took place. As the complainant and his party were the aggressors, they having taken the law into their own hands, the accused no.3 and for that matter accused 4 and others had a right of private defence of property against the aggressors and while exercising this right, the deceased Nagappa came to be assaulted and he died as a result thereof. It is conceded that the death caused was in excess of this right. With this background, we have to first see as to what offence the assailants of the deceased Nagappa, namely, accused nos 3 and 4 have committed. The learned A.P.P. who has unsuccessfully tried to oppose the right of private defence claimed on behalf of these accused, has conceded that the assailants of the deceased Nagappa had no intention to kill him, but that they had only an intention to cause him an injury which was likely to result in his death. He, therefore, placed the offence in question under s.304 part I I.P.C. On the other hand, the learned defence pleader tried to bring the offence down to one of grievous hurt on provocation under s. 335 I.P.C. asserting that there was neither the intention to cause the death nor the intention to cause such bodily injury as was likely to cause death nor was there any knowledge that the death would be caused. The medical evidence on the point consists of the deposition of Dr.Joshi (ex.28), the Medical Officer,Civil Hospital, Belgaum, and the post mortem notes prepared by him and produced at ex.29. The same points out that the deceased Nagappa had sustained three injuries which could be caused by hard and blunt substance. The cumulative effect of these injuries was the fracture of the skull which proved fatal. Dr.Joshi clearly stated that he could not say as to which of these three injuries caused the fracture of the skull. From this admission of Dr.Joshi, it is difficult to say that accused 3 and 4 intended to cause such injury to the deceased Nagappa as was likely to cause his death. If they had any suchintention the injuries would have been

more serious. However, as the injuries were inflicted on the vital part of the body, namely, the head, the accused nos 3 and 4 would be presumed to have knowledge that death would be caused by such injuries. Though the act of these accused was imminently dangerous, still as it is covered by exception no.2 to section 300 I.P.C. the offence, in my opinion would come down to one under s.304 part II of the I.P.Code. The knowledge being the basis of this offence, the section 34 I.P.C. which is founded upon intention cannot apply so as to make the other accused constructively liable for the death of the deceased Nagappa. I may observe here that the presence of accused nos 2 and 5 at the time of the commission of the offence is doubtful as the evidence tends to show to which I have referred in my charge to the Jury more fully So the question of constructive liability, if any, would arise only in respect of accused 1 and 6. But I have answered that question in the negative. I therefore accept the unanimous opinion of the Jury as assessors on this point and hold that accused nos.3 and 4 are only guilty under section 304, part II I.P.Code.

In the result, I convict accused nos 3 and 4 under s.304, part II I.P.C. and sentence each of them to R.I. for five years. I further convict them under s.326 I.P.C. and sentence each of them to R.I. for three years, the sentences to run concurrently. The accused no.4 who is certified to be below 21 years of age is directed to be kept in the Juvenile section of the ordinary prison.

The accused nos 1, 2, 5 and 6 stand acquitted and are ordered to be set at liberty forthwith. Order accordingly.

31/1/1951. Sd. D.S. Lupane.

Ext.Addl.Sessions Judge.

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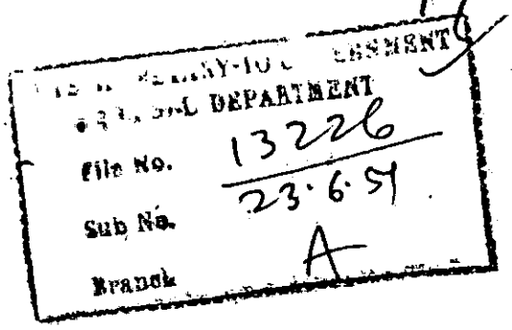


To,

The Remembranc r of Legal Affairs,

Bombay

Sir,

In continuation of my application for filing a Government appeal against the acquittal in Sessions Case no. 65/1950, I beg to state that it appeared that you had asked the District Magistrate Belgaum for submitting the case papers etc. and that the District Magistrate after obtaining the opinion of the Assistant Public Prosecutor has reported to you that the case is not a fit one for appeal. The opinion of the -- Assistant Public Prosecutor on which the District Magistrate has depended is a confused one.

The Assistant Public Prosecutor thinks that when there was delivery of possession of the land the accused went to cultivate the the land in which the offence took place. But there is no evidence as to which particular portion of the land was handed over to the accused. The applicant had been entered long ago as a protected tenant in the village records and that he was not a party to the Revenue Proceedings. The order for possession is not binding on the applicant. The prosecutor has failed to see that the accused had come on the land on that day with spears and clubs and on the injured persons many punctured wounds have been proved. This is not the conduct of a person who wants to peacefully cultivate the land. Evidently the -- object of the accused was to hammer the complainant

if he happened to be on the land as usual. This fact proves that the accused formed an unlawful assembly and as such one and all are constructively liable.

The Defence admitted at the trial that the injuries may be taken to have been caused by the accused 2,3,4 and 6. This fact has been embodied in the charge to the Jury who failed to consider it and hence their verdict is perverse.

The complainant on the very day of the offence has given his story in the Hospital and on that very day 2 or 3 eye witnesses have supported him. The significance of this has not been brought to the notice of the Jury.

The lathis have been produced by the accused no. 1 and there are many lathi wounds on several accused.

The correspondence which is attached was, I believe, intended to be forwarded to you by the District Magistrate but owing to the mistake of the clerk, it seems, it has been sent to me by mistake. However, I saw the opinion of the Assistant Public Prosecutor in the matter. The papers and proceedings of the Sessions Case No.65/50 may be graciously sent for and the necessary action in filing a Government appeal may kindly be taken.

21st June 1951.

Yours faithfully,

Petitioner.

Judgment recorded by the High Court in Criminal Revision Application No. 1094 of 1951 ( By State ) in the case of State vs. Dundaya Rachaya Kulkarni.

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Assistant Government Pleader for the State.

Mr. K. R. Bengeri for the Accused.

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CORAM: Chagla, C.J.

18th January 1952.

ORAL JUDGMENT:

This is an application by the State for enhancement of sentence. The accused was convicted under Section 161 and sentenced to rigorous imprisonment for one day and a fine of Rs. 150/- in default rigorous imprisonment for one month. The accused was officiating as Kulkarni of the village Ganikop in the Bailhongal taulka. The complainant had some lands within the jurisdiction of the Kulkarni and with regard to one land a mutation was effected in favour of one Shivangouda. He approached the Kulkarni and the Kulkarni told him that if a proper application was made by the complainant the mutation would be altered in favour of the complainant. But for doing this he demanded a bribe of Rs. 25. The complainant agreed to pay Rs. 20, and it has been proved that the sum of Rs. 20 was paid by the complainant to the accused on the 4th October 1949 at Bailhongal. Indeed, the payment is not disputed by the accused. He has put forward an explanation as to how he came to receive this sum of Rs. 20 from the complainant.

Now, under Section 4 of the Prevention of Corruption Act 1947 there is a presumption against the accused and the Court must presume that this amount was paid to him as an illegal gratification within the meaning of Section 161 of the Indian Penal Code. Therefore the burden would be upon the accused to establish that although he received Rs. 20 from the complainant it was not received as an illegal gratification but was received for a bona fide or honest

purpose. The contention of the accused was that certain fees were due to a pleader, the pleader asked him to collect the fees, and on the 4th of October the complainant paid Rs. 20 to him to be paid to this pleader. This pleader has been called in evidence by the accused and when we turn to his evidence we find that really that evidence does not help the accused at all. From the evidence of this pleader, whose evidence may be accepted, it appears that one Parwatewa had filed a complaint through this pleader and the hearing of that complaint was fixed for the 4th October 1949. It seems that in this complaint the complainant and his brother were interested and admittedly certain fees were due by Parwatewa to this pleader. The pleader also admits that he told the accused some days prior to the 4th October 1949 that the accused should see that the balance of his fees was paid early. The pleader told the accused this because on one occasion the accused had come to his office along with Parwatewa and the complainant, and further according to this witness on the afternoon of the 4th October the accused came and told him in Court that he was brought into trouble in respect of the fees due to him. Now two or three significant facts may be mentioned. No fees were due by the complainant to this pleader and therefore there does not seem to be any reason why the complainant should pay to the accused Rs. 20 to be paid to the pleader. The second fact is that the fees due were Rs. 25 and not Rs. 20. The third fact is that both the complainant and Parwatewa were at Bailhongal on the day in question and there seems to be no reason whatsoever why Parwatewa or the complainant should have adopted this circutous way of discharging their obligation to the pleader rather than going to the pleader themselves and paying the fees. Finally, the mere fact that the accused told the pleader later on on the 4th of October that he had got into trouble in respect of his fees does not by any means establish the truth of the statement of the accused. It is rather significant that when the accused was arrested and a crowd collected,

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he never suggested that the was being arrested for something which did not constitute an offence. He handed over the moneys to the police and if his case was true that these moneys were received by him to be paid to the pleader as his fees, one would have expected that the accused would have immediately told the police that he had not taken an illegal gratification but that he had been paid for a perfectly honest purpose. It is also significant that though the accused went and told the pleader that he had got into trouble, he never asked the pleader to go to the police and make a statement in favour of the accused. If the story that the accused was putting forward was true, apart from the inherent improbability of that story that story would have been put forward at the earliest opportunity. In my opinion, therefore, even accepting the evidence of the pleader as true it does not help the accused to discharge the burden that lay upon him. In my opinion, therefore, the conviction of the accused was perfectly proper.

Turning to the question of the sentence, I do not think that the sentence of one day's rigorous imprisonment and a fine of Rs. 150 is adequate at all. It is really necessary to root out corruption and the most dangerous corruption is when a poor man is compelled to pay small sums to petty officials in order that they should get their work done. In this case the position is much worse because apparently a wrong order was made of mutation against the complainant and he wanted the Kulkarni to make an investigation and pass the right order, and the Kulkarni insisted upon his palm being greased before he would look into the matter. Very often poor people are helpless and they have got to submit to the claims of petty officials. This complainant had the courage to report the matter to the Anti Corruption Department and not to submit to the demand made upon him by the accused. It is because of him that the offence has come to light, and therefore when such offences do come to light, which is not often, a deterrent sentence must be passed against

against the accused.

I would therefore enhance the sentence to three months' rigorous imprisonment and maintain the sentence as to fine.

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MLA